

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

BOARD OF PARK COMMISSIONERS OF  
THE CLEVELAND METROPOLITAN  
PARK DISTRICT

4101 Fulton Parkway  
Cleveland, OH 44144

Plaintiff,

vs.

ZOOLOGICAL SOCIETY OF  
PITTSBURGH a/k/a PITTSBURGH ZOO &  
PPG AQUARIUM

P.O. Box 5250  
Pittsburgh, Pennsylvania 15206

One Wild Place  
Pittsburgh, Pennsylvania 15206

Defendant.

CASE NO.

**VERIFIED COMPLAINT FOR  
TEMPORARY RESTRAINING  
ORDER, PRELIMINARY  
INJUNCTION, PERMANENT  
INJUNCTION AND DAMAGES**

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Plaintiff Board of Park Commissioners of the Cleveland Metropolitan Park District (“Cleveland Metroparks”) brings this action against Defendant Zoological Society of Pittsburgh a/k/a Pittsburgh Zoo & PPG Aquarium (“Pittsburgh Zoo”) and alleges as follows:

**NATURE OF THE CASE**

1. This is an action for trademark infringement, unfair competition, and false designation of origin brought under the trademark laws of the United States, including the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and for unfair competition under the laws of the state of Ohio.

2. Cleveland Metroparks has cultivated trademark rights to the mark ASIAN LANTERN FESTIVAL™, reaching throughout Ohio and Western Pennsylvania to attract visitors to the Cleveland Metroparks Zoo's annual summer light show. Without authorization, the Pittsburgh Zoo is using the mark ASIAN LANTERN FESTIVAL to promote its own inaugural light show scheduled to begin later this summer. The Pittsburgh Zoo's unauthorized use is likely to confuse and mislead consumers.

### **PARTIES**

3. Cleveland Metroparks is a political subdivision of the State of Ohio created pursuant to Ohio Revised Code Chapter 1545, with its administrative offices located at 4101 Fulton Parkway, Cleveland, Ohio 44144.

4. Defendant the Zoological Society of Pittsburgh is a private non-profit organization incorporated in Pennsylvania, with a registered address of Pittsburgh Zoo, P.O. Box 5250, Pittsburgh, Pennsylvania 15206 and administrative offices located at One Wild Place, Pittsburgh, Pennsylvania 15206. The Zoological Society of Pittsburgh owns and operates a zoo under the name Pittsburgh Zoo & PPG Aquarium, which is located at One Wild Place, Pittsburgh, Pennsylvania 15206.

### **JURISDICTION AND VENUE**

5. This court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction), 1338 (civil action arising under any Act of Congress relating to trademarks), and 1367 (supplemental jurisdiction).

6. Venue is proper in this Court pursuant to 28 U.S.C § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and the Pittsburgh Zoo is subject to personal jurisdiction in this Court.

7. This Court has personal jurisdiction over the Pittsburgh Zoo because it transacts business in Ohio, caused injury in Ohio by its acts or omissions in Ohio, and caused injury in Ohio by acts or omissions outside Ohio while regularly soliciting business in Ohio. Further, this Court has personal jurisdiction over the Pittsburgh Zoo because this complaint arises out of and relates to the Pittsburgh Zoo's contacts with Ohio.

### **FACTUAL ALLEGATIONS**

#### **Overview of Cleveland Metroparks Zoo**

8. Cleveland Metroparks, one of Ohio's largest park districts, was established in 1917 and is comprised of more than 24,000 acres, 18 reservations, and 8 golf courses.

9. The Cleveland Metroparks Zoo is a 183-acre zoological park that has been in existence since 1882.

10. Cleveland Metroparks has owned and operated the Cleveland Metroparks Zoo since 1968.

11. Cleveland Metroparks Zoo's mission is to create compelling experiences that connect people with wildlife and inspire personal responsibility for conserving the natural world. It combines learning, conservation and guest experience.

12. In carrying out its mission, Cleveland Metroparks Zoo offers guests a variety of experiences that expand horizons and introduce guests to animals and cultures from around the world.

**Origins of the ASIAN LANTERN FESTIVAL™ Mark**

13. On April 16, 2018, Cleveland Metroparks entered into an agreement with Tianyu Arts & Culture, Inc. (“Tianyu”) through which Tianyu would work with Cleveland Metroparks to present a light show using lighting displays of various sizes at Cleveland Metroparks Zoo. Cleveland Metroparks and Tianyu entered into separate contracts for subsequent years of ASIAN LANTERN FESTIVAL™.

14. On its website, tianyuculture.us, Tianyu describes itself as an organization that “organize[s] beautiful light displays, festivals, and exhibits in zoos, botanical gardens, fairgrounds, and other venues around the world.”

15. Upon information and belief, prior to its agreement with Cleveland Metroparks, Tianyu had presented its light shows at other locations throughout the United States under the name “China Lights.”

16. Cleveland Metroparks originated the name ASIAN LANTERN FESTIVAL™ in the spring of 2018.

17. Prior to adopting the ASIAN LANTERN FESTIVAL™ name, Cleveland Metroparks performed its due diligence to ensure the name was not being used elsewhere.

18. Upon information and belief, no other entity in the United States was using the name “Asian Lantern Festival” prior to 2018.

19. Upon information and belief, no other park, zoo or other recreational entity within Ohio or western Pennsylvania was using the name “Asian Lantern Festival” prior to 2018.

20. On June 12, 2018, Cleveland Metroparks announced the ASIAN LANTERN FESTIVAL™, an event that would feature more than 40 displays and hundreds of lighting displays across several destinations of the Cleveland Metroparks Zoo.

**Use, Promotion, and Recognition of the ASIAN LANTERN FESTIVAL™ Mark**

21. Since 2018, Cleveland Metroparks has continuously used the mark ASIAN LANTERN FESTIVAL™ to identify its annual light show.

22. Cleveland Metroparks has expended substantial resources advertising its event using the ASIAN LANTERN FESTIVAL™ mark.

23. In 2020, about 41% of the Cleveland Metroparks Zoo's advertising buy—more than \$161,000—was spent on advertising for the ASIAN LANTERN FESTIVAL™. And in 2021, about one-third of the Cleveland Metroparks Zoo's advertising buy—about \$150,000—has been spent on advertising for the ASIAN LANTERN FESTIVAL™.

24. In 2021, Cleveland Metroparks has advertised the ASIAN LANTERN FESTIVAL™ through 12 digital channels, billboards, 4 print media outlets, 8 radio stations, and 5 television stations.

25. Cleveland Metroparks and its employees also promote the ASIAN LANTERN FESTIVAL™ through social media, including Facebook, Instagram, and Twitter. According to 2020 metrics, social media content regarding the ASIAN LANTERN FESTIVAL™ had more than 2.9 million impressions and about 166,000 engagements.

26. The Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™ has also garnered substantial third-party recognition.

27. Since 2018, more than 487 digital, broadcast television, and radio stories have aired about Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™, reaching more than 406 million people at an equivalent advertising value of more than \$3.7 million.

28. In 2020, stories about Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™ have been picked up by at least three radio stations, four television stations, and more than 20 digital content providers.

**Cleveland Metroparks's ASIAN LANTERN FESTIVAL™ Is Widely Attended**

29. Cleveland Metroparks hosted its ASIAN LANTERN FESTIVAL™ in 2018, 2019, and—despite the pandemic—2020. More than 165,000 people attended in 2020, generating more than \$2.6 million in revenue.

30. Consumers throughout Ohio and Western Pennsylvania associate ASIAN LANTERN FESTIVAL™ with Cleveland Metroparks Zoo.

31. Each year, Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™ has attracted consumers from Western Pennsylvania and the Youngstown, Ohio area, which is located approximately halfway between Cleveland and Pittsburgh.

32. In 2020, purchasers from more than 100 cities in Pennsylvania bought tickets to Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™, and more than 1% of purchases came from Youngstown and the cities that touch it, which 1% does not account for the numerous other communities considered part of the Youngstown area, but that do not touch Youngstown directly.

33. Survey results indicate that approximately eight percent of the attendees of 2020's ASIAN LANTERN FESTIVAL™ live in Western Pennsylvania and the Youngstown area.

34. On June 15, 2021, Cleveland Metroparks announced that the ASIAN LANTERN FESTIVAL™ would again take place at Cleveland Metroparks Zoo from July 14 through September 5, 2021.

**Pittsburgh Zoo's Unauthorized Use of the ASIAN LANTERN FESTIVAL™ Mark**

35. In or about 2020, staff from the Pittsburgh Zoo came to Cleveland Metroparks Zoo to visit the ASIAN LANTERN FESTIVAL™ to determine whether Pittsburgh Zoo would like to host a light show of its own.

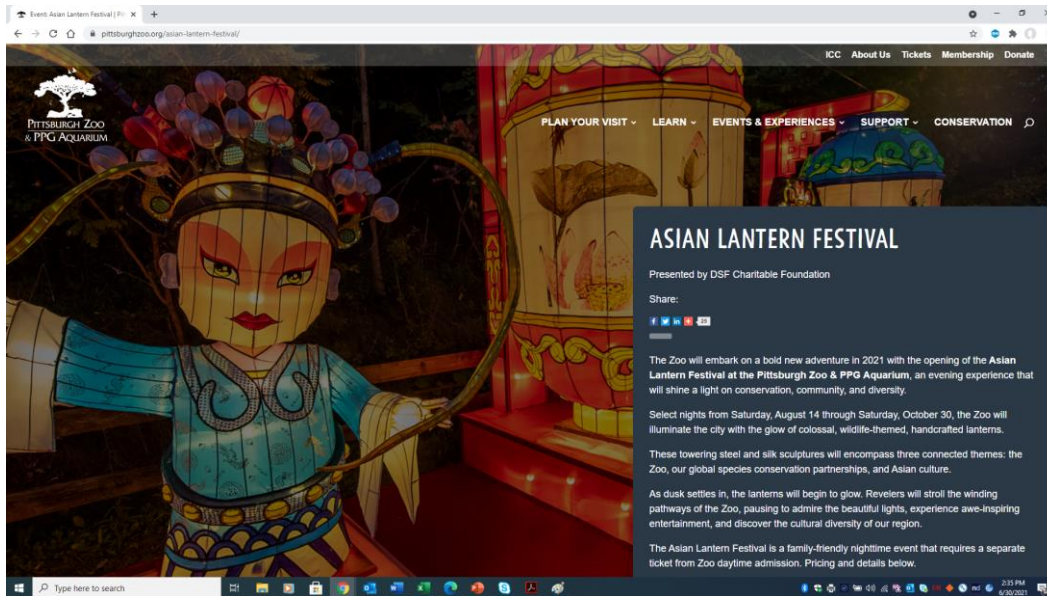
36. Upon information and belief, Pittsburgh Zoo entered into a contract with Tianyu whereby Tianyu would present a light show at Pittsburgh Zoo in or about August 2021.

37. Pittsburgh Zoo's scheduled light show is not the same as, licensed or sponsored by, or in any other way affiliated with Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™.

38. At no time did Cleveland Metroparks authorize Pittsburgh Zoo to use the ASIAN LANTERN FESTIVAL™ mark.

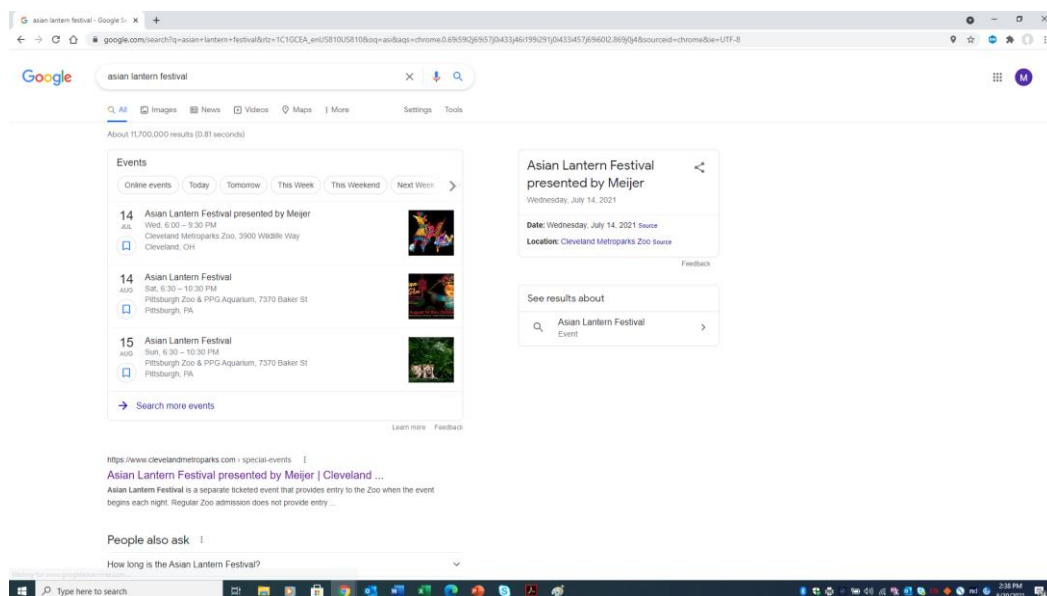
39. On or about June 22, 2021, Cleveland Metroparks became aware that Pittsburgh Zoo is using the name "Asian Lantern Festival" for its inaugural light show.

40. Pittsburgh Zoo is advertising its inaugural light show on its website, <https://www.pittsburghzoo.org/asian-lantern-festival/>, and through advertising on Google and other websites using the name "Asian Lantern Festival":



41. Pittsburgh Zoo began advertising its light show at the same time tickets went on sale for Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™.

42. A Google search for the term "Asian Lantern Festival" returns results for Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™ and Pittsburgh's light show, advertised under the name "Asian Lantern Festival":



43. Upon information and belief, Pittsburgh Zoo is also using photographs of lanterns from Cleveland Metroparks Zoo's ASIAN LANTERN FESTIVAL™ to create advertisements for its light show.

44. On June 25, 2021, Cleveland Metroparks emailed Pittsburgh Zoo, informed Pittsburgh Zoo that Cleveland Metroparks has cultivated trademark rights to ASIAN LANTERN FESTIVAL™ and requested that Pittsburgh Zoo rebrand its event. A true and accurate copy of the June 25 email sent to the Pittsburgh Zoo is attached hereto as Exhibit A.

45. On June 29, 2021, after Pittsburgh Zoo had not responded to Cleveland Metroparks's June 25 email, Cleveland Metroparks sent a letter to Pittsburgh Zoo asking it to cease and desist from using Cleveland Metroparks's trademark ASIAN LANTERN FESTIVAL™. The letter requested Pittsburgh Zoo to confirm by July 1, 2021 that it would rebrand its light show. A true and accurate copy of the June 29 letter is attached hereto as Exhibit B.

46. The chief executive officer of Pittsburgh Zoo called the executive director of Cleveland Metroparks and said that Pittsburgh Zoo was aware of the June 29 cease-and-desist letter.

47. On July 1, 2021, counsel for Pittsburgh Zoo sent a letter to Cleveland Metroparks asserting that Cleveland Metroparks cannot claim trademark rights in the ASIAN LANTERN FESTIVAL™ mark. The letter also said that Pittsburgh Zoo would consider re-naming next year's event, but made no guarantee.

48. Pittsburgh Zoo has not agreed to cease using the ASIAN LANTERN FESTIVAL™ mark.

49. According to Pittsburgh Zoo’s website, tickets for its “Asian Lantern Festival” are available to members now, and tickets become available to the general public on July 8, 2021.

**FIRST CLAIM FOR RELIEF**

**Trademark Infringement, Unfair Competition, and False Designation of Origin  
Lanham Act – 15 U.S.C. § 1125(a)**

50. Cleveland Metroparks hereby incorporates all its prior allegations.

51. Pittsburgh Zoo’s adoption and unauthorized use of the “Asian Lantern Festival” mark in advertising and marketing is likely to cause confusion, cause mistake, and deceive consumers as to the source, origin, affiliation, connection, or association of Pittsburgh Zoo’s light show, and likely to cause consumers to mistakenly believe that Pittsburgh Zoo’s “Asian Lantern Festival” light show has been authorized, sponsored, approved, endorsed, or licensed by Cleveland Metroparks, or that Pittsburgh Zoo is affiliated with Cleveland Metroparks or the goods and services that Cleveland Metroparks offers under the ASIAN LANTERN FESTIVAL™ mark.

52. Pittsburgh Zoo’s acts, alleged herein, constitute infringement, unfair competition, and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

53. By reason of Pittsburgh Zoo’s actions, Cleveland Metroparks has suffered irreparable harm to its valuable trademarks and service marks and the goodwill associated therewith. Cleveland Metroparks has been and, unless Pittsburgh Zoo is preliminarily and permanently restrained from its actions, will continue to be irreparably harmed.

54. As a direct and proximate result of Pittsburgh Zoo’s conduct, Cleveland Metroparks has suffered and will continue to suffer damages in an amount to be proved at trial.

**SECOND CLAIM FOR RELIEF**

**Deceptive Trade Practices  
Ohio Rev. Code § 4165.02(A)**

55. Cleveland Metroparks hereby incorporates all its prior allegations.

56. Pittsburgh Zoo's adoption and unauthorized use of the "Asian Lantern Festival" mark in advertising and marketing is likely to cause confusion or misunderstanding as to the source, origin, affiliation, connection, or association of Pittsburgh Zoo's light show, and likely to cause consumers to mistakenly believe that Pittsburgh Zoo's "Asian Lantern Festival" light show has been authorized, sponsored, approved, endorsed, or licensed by Cleveland Metroparks, or that Pittsburgh Zoo is affiliated with Cleveland Metroparks or the goods and services that Cleveland Metroparks offers under the ASIAN LANTERN FESTIVAL™ mark.

57. Pittsburgh Zoo's acts, alleged herein, constitute deceptive trade practices under Ohio Revised Code § 4165.02(A).

58. By reason of Pittsburgh Zoo's actions, Cleveland Metroparks has suffered irreparable harm to its valuable trademarks and service marks and the goodwill associated therewith. Cleveland Metroparks has been and, unless Pittsburgh Zoo is preliminarily and permanently restrained from its actions, will continue to be irreparably harmed.

59. As a direct and proximate result of Pittsburgh Zoo's conduct, Cleveland Metroparks has suffered and will continue to suffer damages in an amount to be proved at trial.

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**PRAYER FOR RELIEF**

WHEREFORE, Cleveland Metroparks hereby requests that this Court enter a judgment in its favor and order:

A. that a temporary restraining order, preliminary injunction, and permanent injunction be entered prohibiting Pittsburgh Zoo from:

(1) using the ASIAN LANTERN FESTIVAL™ mark or any confusingly similar mark or colorable imitation thereof in connection with the promotion, advertisement, display, sale, or distribution of any goods or services offered by Pittsburgh Zoo;

(2) performing any act, making any statement, or distributing any materials that are likely to lead members of the public to believe that any goods or services performed, distributed, leased, or sold by Pittsburgh Zoo are the same as to any goods or services offered by Cleveland Metroparks or its licensees, are associated or connected with Cleveland Metroparks, or are sold, licensed, sponsored, approved, or authorized by Cleveland Metroparks;

(3) reproducing, displaying, distributing, or creating derivative works from any text, graphics, photographs, videos, or other materials owned by and/or emanating from Cleveland Metroparks or its licensees concerning goods or services offered in connection with the ASIAN LANTERN FESTIVAL™ mark; and

(4) otherwise taking any action likely to cause public confusion, mistake, or deception as to the connection, affiliation, sponsorship, approval, or other association of Pittsburgh Zoo's goods or services with Cleveland Metroparks or its goods or services;

B. that a temporary restraining order, preliminary injunction, and permanent injunction be entered requiring Pittsburgh Zoo to:

(1) surrender for examination and/or destruction any and all materials used in connection with the acts complained of herein in accordance with 15 U.S.C. § 1118;

(2) issue corrective advertising to all customers, potential customers, and other recipients of its prior false advertising in a form and manner directed by the Court;

(3) file with this Court, and serve upon Plaintiffs' counsel within thirty days after entry of such judgment, a written report under oath, setting forth in detail the manner and form in which it has complied with such judgment;

C. that judgment be entered for Cleveland Metroparks against Pittsburgh Zoo for all compensatory, statutory (Lanham Act and Ohio Deceptive Trade Practices Act), and related damages;

D. that judgment be entered for Cleveland Metroparks against Pittsburgh Zoo for punitive damages;

E. that Cleveland Metroparks be awarded all of the costs and disbursements it has incurred in connection with this action;

F. that Cleveland Metroparks be awarded attorneys' fees under the Lanham Act and the Ohio Deceptive Trade Practices Act, or as otherwise allowed by law or equity;

G. that Cleveland Metroparks be awarded interest, including pre-judgment and post-judgment interest, at the statutory rate; and

H. such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: July 2, 2021

/s/ Carrie A. Shufflebarger  
Carrie A. Shufflebarger (0081141)

Carrie.Shufflebarger@ThompsonHine.com

**THOMPSON HINE LLP**

312 Walnut Street, 14th Floor

Cincinnati, Ohio 45202-4089

Phone: 513-352-6678

Fax: 513-241-4771

Mark R. Butscha, Jr. (0088854)

Mark.Butscha@ThompsonHine.com

**THOMPSON HINE LLP**

3900 Key Center

127 Public Square

Cleveland, Ohio 44114-1291

Phone: 216-566-5500

Fax: 216-566-5800


*Attorneys for Plaintiff Board of Park*

*Commissioners of the Cleveland Metropolitan Park  
District*

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2021.

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Kelly Manderfield  
Chief Marketing Officer, Cleveland Metroparks